

wharfage at those wharves held separate to be accounted for and paid over as should be ultimately determined by the court who is entitled to the wharfage. But, if this point is to be decided, it must be after a decision at law upon the right; and it does not appear that any action has been, or is intended to be brought for the purpose of trying the right; and the title of the plaintiffs does not appear sufficiently clear and strong. The bill in this case was altered; and an order passed appointing the collector of the city of Baltimore as receiver, with power to pay over to *The Mayor, &c.* and to keep an account, &c.

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After which the plaintiff *McElderry* died, and another suit was instituted in this court by the plaintiff *Dugan* and the heirs of *McElderry* against these defendants; and the cases having been brought on to be heard, it was agreed, on the 29th of April, 1831, that in the place of the copy, which had been shortly before received, a new bill should be filed, as an original bill, in lieu of the first one; and that the answer to the first bill should be filed and considered as an answer thereto.

In this new bill, filed on the 11th of May, 1837, it is stated, that by the act of 1784, ch. 62, all that parcel of ground in Baltimore, now commonly called Market space, extending from Baltimore street south, parallel with Gay street, of the width of one hundred and fifty feet to Water street, with the privilege of extending the same to the channel, became vested in the then commissioners of Baltimore town, to hold for the purpose of erecting a market-house thereon; and for the use of the then town, in like manner as if they had been constituted a body politic; that in the year 1794, the common tide flowed within this space up to and over Water street; that this plaintiff *Dugan* being seised in fee simple of the ground on the west side of Market space, extending from the north side of Pratt street to the water; and the plaintiff *McElderry* being seised in fee simple of the ground on the east side of Market space, extending from the north side of Pratt street to the water, they, on the 10th of February, 1794, made the following proposition to the then commissioners of Baltimore town,

‘We, the subscribers, request your permission for making a canal and wharf at our expense, in the Market space from the south side of Pratt street to the channel or port-warden’s line; the canal to be eighty feet wide, and the streets on each side the same to be thirty-five feet wide; the said canal, wharf, and streets